



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

February 2004

William Fortier
5 Upstone Lane
Derry, NH 03038

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 04-039**

RE: LONDONDERRY, FREEDOM FUEL & FOOD, EXISTING UNDERGROUND STORAGE
TANK FACILITY (UST #A- 0112300) (DES # 199103059)

Dear Mr. Fortier:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 128 West Broadway, Londonderry, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 15, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on May 11, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection devices for the 10,000-gallon diesel UST was not installed at the required 90% alert or 95% shut off level. Written verification in writing that the overfill protection device for this tank is installed at the required 90% alert or 95% shut off level shall be submitted to DES.

Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitor for the 10,000-gallon regular gasoline UST was in alarm condition due to liquid in the interstitial and the tank system was not temporarily closed. Liquid needs to be removed from the interstitial space of this UST and verification that the interstitial sensors are located at the bottom center of both USTs shall be provided to DES. Also, an annual leak monitor test shall be conducted and the results submitted to DES.

3. **Env-Wm 1401.27 Leak Monitoring for New Underground Piping Systems and Env-Wm 1401.31 Operation of Leak Monitoring Equipment**

Env-Wm 1401.27 and/or Env-Wm 1401.31 require leak monitoring for piping to be installed and continuously operate. DES has determined that the leak monitor for the piping of each tank was in

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alarm condition and the piping systems were not temporarily closed. Each sump must be cleaned of all water and product and the sump sensors must be reset at the proper level. Written verification of this shall be submitted to DES.

4. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires line leak detectors to be installed on all pressurized piping systems and tested annually to confirm that they are operating according to manufacturer's recommendations. DES has determined that the passing annual line leak detector tests had not been performed. A passing test for each line leak detector shall be provided the DES.

5. Env-Wm 1401.04 Registration

Env Wm 1401.04 requires a registration form to be on file at DES for all regulated UST systems. A review of DES records indicates that a registration form for the 500-gallon fuel oil UST system is not on file. A registration form shall be provided for all unregistered UST systems.

6. Env-Wm 1401.32 Corrosion Protection for Steel Tanks and Env-Wm 1401.33 Corrosion Protection for Piping

Env-Wm 1401.32 and Env-Wm 1401.33 requires corrosion protection be installed on tanks and piping prior to December 22, 1998. DES has determined that corrosion (cathodic) protection was not installed on either the tank or piping; therefore, the tank and piping system must be permanently closed. A closure report, as required by Env-Wm 1401.18 shall be submitted as verification.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit # 0112300) shall be revoked effective **May 11, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

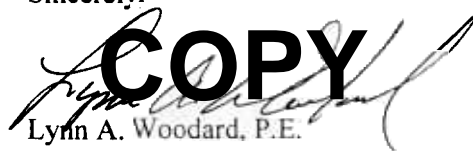
You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,


COPY

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0584 4769

cc: Michael P. Nolin, Commissioner
Mark Harbaugh, DES Legal Unit
Fred McGarry, P.E., Chief Engineer, WMD
George Lombardo, P.E., WMD
Tom Beaulieu, WMD
Health Officer, Town of Londonderry